

Introduction of Bills.

Sri KADIDAL MANJAPPA (Minister for Revenue).—Sir, I beg to introduce the Hyderabad Tenancy and Agricultural Lands (validation) Bill, 1961.

Mr. SPEAKER.—The Hyderabad Tenancy and Agricultural Lands (validation) Bill, 1961 is introduced.

Sri T. SUBRAMANYA (Minister for Development and Local Self Government).—Sir, I beg to introduce the Madras Area Municipalities (Extension of term of Councillors) (Amendment) Bill, 1961. It has been published in the Mysore Gazette under Rule 64 of the Rules of Procedure and Conduct of Business in the Mysore Legislative Assembly.

Mr. SPEAKER.—The Madras Area Municipalities (Extension of term of Councillors) (Amendment) Bill, 1961 is introduced.

THE MYSORE TOWN AND COUNTRY PLANNING BILL, 1961.

Sri T. SUBRAMANYA.—I beg to introduce the Mysore Town and Country Planning Bill, 1961. This Bill has been published in the Mysore Gazette under Rule 64 of the Rules of Procedure and Conduct of Business in the Mysore Legislative Assembly.

Mr. SPEAKER.—The Mysore Town and Country Planning Bill, 1961, is introduced.

THE MYSORE UNIVERSITY (SECOND AMENDMENT) BILL, 1961.

Sri ANNARAO GANAMUKHI (Minister for Education).—I beg to introduce the Mysore University (Second Amendment) Bill, 1961.

Mr. SPEAKER.—The Mysore University (Second Amendment) Bill, 1961, is introduced.

THE MADRAS ALIYASANTANA (MYSORE AMENDMENT) BILL, 1961.

Motion to Consider.

†Sri B. VAIKUNTA BALIGA (Minister for Law and Labour).—I beg to move :

“That the Madras Aliyansantana (Mysore Amendment) Bill, 1961, be taken into consideration.”

Mr. SPEAKER.—Motion moved :

“That the Madras Aliyansantana (Mysore Amendment) Bill, 1961, be taken into consideration.”

†Sri B. VAIKUNTA BALIGA.—Sir, this is a very simple Bill. I might at this juncture refer to para 91 of the Report submitted by the Joint Select Committee on the Mysore Land Reforms Bill, 1958. In para 91 is stated as follows :

“The Committee considered the representations made on behalf of the Members of the Aliyasantana families in South Kanara District and the Committee are of the opinion that the

(Sri B. VAIKUNTA BALIGA)

Madras Aliyasantana Act, 1949, should be amended conferring a right on every male or female member of a Kutumba or Kavaru to claim partition and obtain possession of his or her share in the properties of the Kutumba or Kavaru, the division being made on a *per capita* basis and the share obtained by such Members being his or her absolute property. The Committee recommend that the amendment suggested should be enacted into law before the Land Reforms Law comes into force."

Apart from the weighty observation made by the Committee I might also say that there were representations received by Government from various bodies and various individuals and various groups of persons and among them are representations from the claimants under the Aliyasantana law saying that the provisions of the Madras Aliyasantana Act, 1949, should be amended to enable members of a Kutumba or Kavaru to take their share of the property. I might also say that the Aliyasantana Women's Association of South Kanara and several others also made representations. I might say here that the Madras Aliyasantana Act, 1949, was an amendment of the customary law according to Aliyasantana rules of succession. This customary law is a bit peculiar. That is what is called the matriarchal law tracing descent in intestate succession through females. I do not think I should get into great details here, but only refer to the Act of 1949 and refer in particular to only a few definition clauses and also Sections 35, 36 and 37 with a view to help consideration of the Bill. There is also an annexure attached to the Bill. From that it will be seen that while normally the right of partition did not exist, it has been provided for at the desire of members governed by the Aliyasantana law. Section 35 gives a right to the Kavaru members to claim partitions after ascertaining the share as provided in Section 36, Section 37 mentions the type of partitions applicable to Kavarus.

I might invite the attention of the House to a subsequent enactment by the Central Government called the Hindu Succession Act, 1956, an abstract of the provisions of which has been given in the annexure. It will be seen from that the definition and the interpretations in Section 3 provide that the Aliyasantana law means the system of law applicable to persons who if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949, or by the customary Aliyasantana law with respect to the matter for which provision is made in this Act. I might also invite attention to Section 7 which provides for devolution of interest in the property. These are the provisions for the considerations of the House. With a view to give effect to the recommendations made by the Committee and also to satisfy the keen desire of the members of the group governed by Aliyasantana law this Bill has been brought before the House for consideration.

It will be seen that a few small amendments are suggested and a new Section 37A is sought to be added providing for partition of properties of a Kutumba or Kavaru after the commencement of the Madras Aliyasantana (Mysore Amendment) Act, 1961. The section says :

“On and after the date of commencement of the Madras Aliyasantana (Mysore Amendment) Act, 1961, any male or female member of a Kutumba or Kavaru having undivided interest in the properties of the Kutumba or Kavaru shall be entitled to claim partition of his or her share in the properties of the Kutumba or Kavaru as the case may be.

sub-clause (2) says :

“Where any male or female member of a Kutumba or Kavaru entitled to claim partition under sub-section (1) claims partition of his or her share, such person shall be allotted such share in the properties of the Kutumba or Kavaru, as the case may be, that would fall to him or her if a division of such properties were made *per capita* among all the members of the Kutumba or Kavaru, as the case may be, living on the date on which the partition is claimed.”

I read over these provisions only for the purpose of illustrating that while in the 1949 Act the provision was not *per capita* absolute and rigid as it is now provided, the partitions that are now going to be effected hereafter are going to be on *per capita* basis. I might also mention that a similar law called Marumakathayam law prevails in the adjoining district which provides for division on *per capita* basis. It was thought in 1949 at the time when the law was amended that partitions should be *per stripes* in some cases and *per capita* in other cases. Under the 1949 Act life interest was given to a male, but hereafter there will not be such a distinction and it is now proposed that partitions should be on *per capita* basis and it should be absolute.

I am sure that this Bill will find the favour of the House and its kind acceptance.

10-30 A.M.

†Sri V. SRINIVASA SHETTY (Coondapur).—Sir, this measure is long overdue. As my friend, the Law Minister just now said, the Bill came before the Madras Legislative Assembly in 1932 and the idea was to apply the Marumukhatayam Act to both South Kanara and Malabar. In that Bill provision was made for absolute partition *per capita*. The gentlemen from South Kanara who stood affected thought that it was a revolutionary measure and not suited to South Kanara. As a result of strong agitation the Government was compelled to drop the idea of applying that law to South Kanara but the Act was enforced in Malabar in 1932. Very recently the people of South Kanara have been having second thoughts on the subject and they now feel that a change in law is necessary.

(Sri V. SRINIVASA SHETTY)

I might bring to the notice of this House that the present act is a cumbersome one. The Law Minister had ample experience about Alyasanthana as a lawyer, though he is not affected by the law as such. Apart from the mode of partition, there are some other modes which are cumbersome. I know that suits filed in 1942 and afterwards are still pending in the courts. The Courts find it difficult to partition the property under the provisions of the present Act. I can only say that the Bill now under consideration was long overdue. As a matter of fact this Bill was in the offing two or three years ago and it had since then undergone lot of permutations and combinations.

I have no objection for partitions *per capita*. Such a provision prevails in the Malabar area and also, I believe, in Kerala. That is necessary for South Kanara also. We are now practically coming alongside to Mitakshara law and I might even say we are going ahead.

I would now refer to one lacuna. I would refer to the Nissanthathi Kavarus who have had their partition before this law. They will be in the air; they would be like Trisonku. Nissanthathis are women who are past the age of 50 and also those who are males. The idea is that they are not capable of bearing children. Such persons, who have had partition under the existing act, are enjoying the property. That is why they are called 'male widows'. (laughter). They can enjoy the property till their lifetime and then their share accrues under clause 36 (5) of the existing act to the Kutamba or the Kavarus, as the case may be. I would ask the Law Minister as to what would happen to these properties after the death of Nissanthathi. How would this property devolve on the members of the family. All the members of the family within a short time would have divided themselves *per capita* and there would be as many branches as there are members. Would the Government come again to the Legislature with an amending provision? Only the other day when I saw the draft Bill, there was a provision for this; now that is missing. In the absence of such a provision, it would affect a very large number of persons and a very large extent of property. Every person would rush to the court or the Santhathi kavarus will have to rush to the court.

A member of Aliyasanthana family has got an absolute right though he cannot claim partition. His wife and children get the property after his death. This is also another Trisonku Sorga. That is a Central law. When there is such a law, why not make it more simple and clear let him have the right which he would get under the Hindu Succession Act.

With these observations, I welcome this Bills. I only wish the loophole mentioned by me would be plugged.

†Sri Y. MANJAYYA SETTY (Baindur).—Mr. Speaker, in supporting the Bill under discussion, I wish to make a few observations. This is a most non-controversial Bill introduced in this House. The very fact

that the Hon'ble Member Sri V. Srinivasa Shetty the only person in the opposition who follows this Aliyasanthanam Law has supported the Bill and moved no amendment to the Bill, goes amply to show that this legislation is welcomed not only by all sections of this House but also the people of South Kanara who follow this Aliyasanthana Law. As observed by Sri V. Srinivasa Shetty there was an attempt to bring a similar legislation as early as 1942 but as there was a strong conservative section in South Kanara who were opposed to any change in the Aliyasanthana law, the Bill was dropped in Madras. Subsequently in introducing 1949 Bill attempts were made to bring similar amendments to the Bill but due to some political or other reasons, a strong opposition waited on deputation on the then Governor and so such provision could not be passed. Now, I am glad that the Hon'ble Minister for Law took pains in introducing this Bill. Now the opinion is quite favourable and I must say that all persons who follow this system of law are one in their opinion in bringing this piece of legislation.

As per the old law, women were given better rights and as stated by the Hon'ble we men are considered as widows. Now equality of right is granted by this amending Bill and we are very happy about this.

The Hon'ble Minister in his introductory speech observed that in the Select Committee report on Land Reforms also certain recommendations were made for bringing this piece of legislation. Surely by this amending Bill the members of the Aliyasanthana family could take advantage of certain provisions of the land reforms, namely, in the matter of ceiling and for leasing of land and so on. So, ninety per cent of the Aliyasanthana families would be greatly benefitted by certain provision of the land reforms Bill by this amending Bill. With this Bill, I must say that we are bidding good bye to the system of Aliyasanthana which was founded by one Bhakta Pandya. The history says that Bhakta Pandya was a chieftain at Barathur in South Kanara. He built a boat for the purpose of trade in countries like Arabia and before launching that boat one of the persons who built the boat and who was possessed with devil power of Gundodhara said, it seems, that unless human sacrifices are made the boat could not be launched into the sea. So, the chieftain instead of sacrificing one of his subjects, wanted to sacrifice his own son. He asked his wife to sacrifice one of her sons but the wife was reluctant to agree with it. So, he asked his widowed sister to agree to give one of her sons for the purpose of sacrificing to the Devil Gundodhara. That sister agreed to part with one of her own sons. But when that son was about to be sacrificed, the nephew of Gundodhara the person who built the boat, announced that he need not be sacrificed but only a few drops of blood from his body would be enough. It appears the toe of that person was sacrificed and subsequently the boat was launched into the sea and the chieftain amassed great wealth by trading in countries like Arabia. Being annoyed with the attitude of his own wife and being pleased with his own sister, he announced that all his properties would go to the sons of

(Sri Y. MANJAYYA SETTY)

the sister and he asked his subjects also to follow that practice. So from then onwards this system is in vogue.

This system is in vogue for quite some time but during the last 30 years due to various circumstances and change of time and due to progressive ideas in the whole world, we thought that we cannot cling on to this system. So, we thought of representing to the Government to introduce this piece of legislation. I am happy that Sri B. Vaikunta Baliga will have the credit of introducing this Bill and will have the blessings of all members of the Aliyasanthana family. I wish him all success.

†Sri G. VENKATAI GOWDA (Palyam).—Sir, there is no provision in the Bill as to what should happen to the properties allotted to a nissanthathi kavaru. In the absence of any provision, I think it is proper that they are governed by the Hindu Succession Act. Section 7 of the Hindu Succession Act is clear. It is said that when a Hindu who has an undivided interest in such property of a kutumba or kavaru dies, his or her interest in such properties shall devolve by testamentary or interstate succession under that Act and not according to Aliyasantana law. Here it is said that every member of the Aliyasantana family is entitled to claim for partition. In one respect this differs from the Hindu Succession Act. Under this Act, the females are not entitled to any partition as such but they are entitled to a share of the property. If the person dies intestate then only they can claim for partition.

I am having one more grievance and that is with regard to the application of provisions of this Chapter. It is said that :

“the provisions of Sections 35, 36 and 37 shall apply to every partition of properties of a kutumba or kavaru effected by metes and bounds before the date of the commencement of the Madras Aliyasantana (Mysore Amendment) Act, 1961, and to every partition claimed under Section 35 before the said date.”

By passing the Hindu Succession Act, I hold that the Madras Aliyasanthana Act has been superseded because in the definition it is said that Aliyasantana means the system of inheritance in which descent is traced in the female line. So, after the passing of the Hindu Succession Act of 1956, this Aliyasantana Act would be superseded. Are we entitled to bring an amendment to give retrospective effect. Now according to the Madras Aliyasantana Act, you are entitled to partition. I would request the Hon'le Minister to see that the Madras Aliyasantana law as provided under Sections 35, 36 and 37 gives right to partition under certain conditions. The question is could we make a law anterior to the passing of the Hindu Succession Act of 1956 giving retrospective effect? If the law were applicable to partition after 1956, it would be understandable. How can we validate this by bring this amendment to 34-A? So far as 37-A is concerned, it is all

right. I have got my grievance only to 31-A, whether it would be legal and tenable for all these partitions made by suits and made in accordance with Madras Aliyasantana law.

†Sri B. VAIKUNTA BALIGA.—I am grateful to the members who have participated in the discussion and particularly to Mr. Shetty for giving a warm reception to this Bill, his whole-hearted support. Sir, it is seen that there is no controversy so far as the provisions of the Bill before the House is concerned. What has been pointed out is something not found there. I would like to submit and explain the question put to me, though they do not directly arise, by Mr. Venkatai Gowda. I will say that Section 31 should be there. If partitions effected under the Act of 1919 are there, those will be governed by that. Whenever partition rights have been created in favour of various persons, they have to be protected and they will continue to be there. That is why Section 34-A is expressly provided for partitions already effected and to be effected hereafter.

Sri V. SRINIVASA SHETTY.—Even pending suits ?

Sri B. VAIKUNTA BALIGA.—I have not said that. Partition not made under Aliyasanthana Act is—I do not know if it is prior to 1919. That was only purely contractual. It will perhaps take considerable time to convince my honourable friend as to what the custom was. Partition is not a matter of right. It is a matter of convenience and agreement. These are all vexed problems which the House, I do not know, should know, particularly when the custom has been modified once before and again modified by this Bill. In order to protect partitions made prior to 1961 by the Act of 1919, Section 34-A is added as an additional clause. So far as Nissanthathi Kavaru are concerned to whom properties have been allotted according to the law of 1919, all rights will be protected. Therefore, so far as proprietary rights are concerned, which has to be put into definite sections and canalised, that will mean that they are already vested in them. This is very important—how far this Act can amend that, and how far the Central Act of 56 will be violated is a point on which opinion is very much divided. Where provision is made that life interest given to a person will descend, as provided in Section 7, how far it will be violating is a point which is very doubtful. If that is violated, the question is whether we can make any legislation to control it. If the effect of Section 7 of the 1956 Central Act is to convert life interest into absolute interest and say that it has descended upon a person to exercise to Nissanthathi Kavaru, then, there is no scope for indicating it. But till the position is clarified by a judicial pronouncement, by the Supreme Court, to bind on all parties, it will be matter of doubt. In such a doubtful matter, we should not rush to legislation here and make things more complicated. We might inflict more litigation on families is a point which has to be considered. In the draft Bill there was that provision. But it was

(Sri B. VAIKUNTA BALIGA)

withdrawn with regard to another small section of the pending proceedings, pending proceedings have been started in the Act of 1949. But how far it can be given effect to is a point. We were also advised and I am personally aware of similar legislation passed by the Madras legislature, where illum properties or sthanam properties were converted into family properties. It was held to be discriminatory and it was not possible to make a legislation and that legislation is not valid. In these circumstances, if we have left, instead of introducing in this Bill such a controversial measure, it will be wise to wait for a full bench decision and if it is necessary after that we may consider it. Section 7 is clear. It is clear to one and it may not be clear to another. There are so many who hold different views. In these circumstances, it was not included. If this view is held, as enunciated by Mr. Venkatai Gowda, then, it becomes necessary.

Sri G. VENKATAI GOWDA.—No woman is allowed to hold life interest. So it becomes absolute.

Sri B. VAIKUNTA BALIGA.—As already submitted, it is a controversial point. That is why Government has not taken it. It is not our desire to embarrass families by creating legislation, as a result of which new litigation, will come. I would therefore appeal to all the friends to unanimously agree to the passing of this Bill.

Mr. SPEAKER.—The question is :

“That the Madras Aliyasantana (Mysore Amendment) Bill, 1961, be taken into consideration.”

The motion was adopted.

Mr. SPEAKER.—Now, the Bill will be read clause by clause, As there are no amendments, I will put all clauses to the House. The question is :

“That Clauses 2 to 5 both inclusive stand part of the Bill.”

The motion was adopted.

Clauses 2 to 5 both inclusive were added to the Bill.

Mr. SPEAKER.—Clause, 1 the Preamble and the Short Title.

The question is :

“That Clause 1, the Preamble and the Short Title stand part of the Bill.”

The motion was adopted.

Clause 1, the Preamble and the Short Title were added to the Bill.

Motion to pass.

Sri B. VAIKUNTA BALIGA.—I move :

“That Madras Aliyasantana (Mysore Amendment) Bill, 1961, be passed.”

Mr. SPEAKER.—The question is :

“That the Madras Aliyasantana (Mysore Amendment) Bill, 1961, be passed.”

The motion was adopted.

THE MYSORE MOTOR VEHICLES (TAXATION ON PASSENGERS AND GOODS) (AMENDMENT) BILL, 1961.

Motion to consider.

†Sri H. M. CHANNABASAPPA (Minister for Home).—I beg to move :

“That the Mysore Motor Vehicles (Taxation on Passengers and goods) (Amendment) Bill, 1961, be taken into consideration.”

Mr. SPEAKER.—Motion moved :

“That the Mysore Motor Vehicles (Taxation on Passengers and Goods) (Amendment) Bill, 1961, be taken into consideration.”

†Sri H. M. CHANNABASAPPA.—Sir, it is a very simple and very helpful measure. Section 14 of the Mysore Motor Vehicles Taxation on Passengers and Goods Act 1961 provides for composition of the Passengers and Goods Tax. According to details in the Statement of Objects and Reasons, it is provided that the composition amount will have to be paid in advance for a period of three months. After passing of this Act, the operators made a representation that it would tell very hard upon their financial resources if they are asked to deposit the composition amount for a period of three months in advance. The Government considered it is a very reasonable demand. They made a request that they may be permitted to deposit one month's advance. The Government appreciated the position. Since it is not going to affect the Government's interest and at the same time it would create some convenience for the operators, the Government found absolutely no difficulty in accepting the position. But it could not be given effect to without the necessary amendment which has been now introduced. Since this is going to help the operators and make it easy for them to deposit the amount on monthly basis, I hope there should be no objection to it and the amendment Bill proposed may be accepted unanimously.

†Sri C. K. RAJAI AH SHETTY.—It is a very simple piece of legislation which has to be welcomed. On the request of the operators, the Government have considered sympathetically to take one month's deposit in place of three months and we thank the Government. It has given so much convenience to the operators and we thank the Government the Minister in charge.

Mr. SPEAKER.—The question is :

“That the Mysore Motor Vehicles (Taxation on Passengers and Goods) (Amendment) Bill, 1961, be taken into consideration.”

The motion was adopted.